IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal Action
	:	
v.	:	
	:	
JOSE CASTILLO, M.D.	:	NO. 96-CR-430

Rendell, J. August 7, 1997

MEMORANDUM

After a week-long jury trial, defendant Jose Castillo, M.D., was convicted of one count of conspiracy to harbor a fugitive, Richard Ramos, and one count of obstruction of justice. Castillo has moved for judgment of acquittal on both counts, or a new trial, pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure. Castillo bases his motions on: first, insufficient evidence of certain elements of the offenses charged; second, failure of the proof to comport with the indictment; and, third, alleged deficiencies in my evidentiary rulings and jury instructions.

The standards applicable to the consideration of Castillo's motions place a heavy burden on a defendant convicted at trial in order to overturn or overcome a jury verdict. Rule 29 of the Federal Rules of Criminal Procedure provides in relevant part that "[t]he court on a motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment . . . if the evidence is

insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). In considering Castillo's motion for judgment of acquittal, the standard to be used is whether there was substantial evidence upon which a reasonable jury could have based its verdict. United States v. Obialo, 23 F.3d 69, 72 (3d Cir. 1994). The evidence must be viewed in the light most favorable to the government. Id.; see United States v. Thomas, 1997 WL 282317, at *2 (3d Cir. May 29, 1997). Evidence which is sufficient to support a conviction need not be direct evidence, and the conviction will stand if supported by circumstantial evidence. United States v. Fenech, 943 F. Supp. 480, 483 (E.D. Pa. 1996). Furthermore, in deciding a motion for judgment of acquittal, a court cannot assess the credibility of the witnesses. United States v. Pardue, 983 F.2d 843, 847 (8th Cir. 1993), cert. denied, 509 U.S. 925 (1993).

Rule 33 of the Federal Rules of Criminal Procedure provides that the court "may grant a new trial to [a] defendant if required in the interest of justice." It is a remedy to be used sparingly, reserved for exceptional circumstances, where the evidence preponderates heavily against the verdict or where failure to grant a new trial would result in a miscarriage of justice. Fenech, 943 F. Supp. at 486. The trial judge may not set aside the verdict simply because he came to a different conclusion than the jury. United States v. Sabrese, 1994 WL 193916, at * 1 (E.D. Pa. May 18, 1994). With regard to jury instructions, retrial is necessary only when the instruction given created an unfair trial and prejudiced the defendant. See

United States v. Dove, 916 F.2d 41, 45 (2d Cir. 1990) ("In order to succeed when challenging jury instructions appellant has the burden of showing that the requested charge 'accurately represented the law in every respect and that, viewing as a whole the charge actually given, he was prejudiced.'").

DISCUSSION

Richard Ramos was the leader of a family drug organization that operated in the Spring Garden section of Philadelphia. The defense conceded from the outset -- in fact, noted in its opening statement -- that the Ramos family was a tight-knit family, experienced in crime, and dedicated to protecting their turf. The evidence revealed that at least five members of the family were involved in the distribution of cocaine. These included Richie and his brother Edwin, their brother Jerry (who was shot to death in July 1990), as well as their mother Maria and sister Elizabeth. Edwin and Jerry were indicted in April 1990. Sealed indictments were handed down against Richie and 39 others involved in the Ramos organization on September 18, 1990. Richie was alerted and fled, spending the next year and a half as a fugitive, evading authorities and living in Philadelphia and the Poconos until he was apprehended in January of 1992. The defense also concedes that Ramos had a cadre of family, friends, assistants and informants who helped him evade authorities during this time. The evidence revealed that Elizabeth and Maria Ramos were indicted on May 28, 1991, were tried and convicted of being part of the cocaine conspiracy, and that Maria Ramos is serving a

term of life imprisonment and Elizabeth, 23 years. It was uncontested that Dr. Castillo was Maria Ramos's doctor, that she saw him frequently, and that he testified as her doctor at a hearing in November 1991 as to her physical condition to stand trial. The government charged that Dr. Castillo performed various procedures on Ramos's face, stomach and fingerprints to alter his appearance and aid him in eluding authorities.

1. Failure of proof of conspiracy and obstruction of justice.

Castillo contends that the government failed to prove the elements of Count 1, in that it failed to prove that Castillo was party to a conspiracy, that he knew Ramos was a fugitive, and that he knew that the object of the conspiracy was to harbor a fugitive. He contends further that the government also failed to prove the obstruction of justice offense charged in Count 2 because there was insufficient evidence to support the element of intent and to support the government's theory that a key piece of evidence produced by Castillo -- namely, a purported record of treatment of Richard Ramos by Dr. Castillo on May 14, 1990, for burns caused by a barbecue accident (the "Treatment Record") -- was a fabrication.

As pointed out by the government, direct evidence of an actual agreement in conspiracy cases is rare and the conspirators' intent is usually established circumstantially through their actions. See United States v. Thomas, 1997 WL 282317, at *2 (3d Cir. May 29, 1997) ("The elements of a conspiracy may be proven entirely by circumstantial evidence . .

. but each element must be proven beyond a reasonable doubt."); See also United States v. Perez, 1996 WL 502292, at *3 (E.D. Pa. August 27, 1996)("Although the government needs to prove conspiracy beyond a reasonable doubt, each element of conspiracy can be proven through circumstantial evidence."); see e.g., Direct Sales Co. v. United States, 319 U.S. 703, 713 (1943) (finding that step from knowledge to intent and agreement may be taken). Further, the government may prove knowledge of a federal warrant from the acts of harboring themselves. See United States v. Silva, 745 F.2d 840, 848 (4th Cir. 1984)(finding that conduct after the issuance of a warrant established an inference of knowledge that a warrant had been issued), cert. denied, 470 U.S. 1031 (1985); see also United States v. Giampa, 290 F.2d 83, 84 (2d Cir. 1961)(finding that defendant's actions established adequate proof from which the court could properly infer knowledge of the issuance of a warrant beyond a reasonable doubt). With respect to the obstruction of justice charge arising out of the Treatment Record, specific intent to obstruct justice is an essential element of the offense. However, intent to obstruct justice may be inferred by the jury from all the surrounding facts and circumstances. United States v. McComb, 744 F.2d 555, 561 (7th Cir. 1984); see United States v. Simmons, 591 F.2d 206, 209 (3d Cir. 1979). A review of the evidence is instructive in addressing defendant's claims as to the sufficiency of proof.

Three government witnesses testified as to Ramos's changed appearance, as well as to procedures performed late at

night at Dr. Castillo's office. First, Luisa Rodriguez, Ramos's girlfriend, testified that while Ramos was a fugitive, she observed changes to his nose and the scars on his face. She learned from Ramos that Dr. Castillo was the doctor performing the surgeries. She testified that the bullet wound scar on Ramos's face was gone in October or November 1990, and in late 1990 she actually accompanied Ramos to one of the surgeries, late at night, to remove fat from his abdomen. She parked the car in the garage beneath his office, which was on the first floor of his home at 22nd and Locust Streets, in Philadelphia. Upon entering the office with Ramos, Dr. Castillo had inquired of Ramos as to who she was, and Ramos told Dr. Castillo that she was his cousin. At one point during the procedure, she entered the treatment room, saw Ramos cut open with fat exposed, and fainted. Rodriguez also testified to having driven Elizabeth and Dr. Castillo on a seven-hour trip in the fog to the Poconos after this surgery, so that Dr. Castillo could treat Ramos for an allergic reaction. She stated that Dr. Castillo was nervous. Rodriguez's testimony regarding these events was credible and compelling. In a later conversation between Rodriguez and Dr. Castillo in November 1993, which was taped and played in court, Rodriguez reminded Dr. Castillo of the surgical procedure she had witnessed, and the trip to the Poconos, and he acknowledged what she was saying, indicated that he remembered her fainting, and recalled that he knew her from that night.

Sonia Santos, Ramos's common law wife, testified that when she first saw Ramos after he had fled, in or around the

spring of 1991, neither she nor her children recognized him. She noted that one of his hands was bandaged, and he told her he was changing his fingerprints. She also testified about driving Ramos to Philadelphia from the Poconos in the middle of the night to have his other hand operated on at a location that she identified without hesitation as that of Dr. Castillo's office. She testified that Ramos had the bullet removed from his head, facial scars removed, and his hands treated, as well as his stomach.

Ramos himself testified that he and his mother conceived the idea to have the surgeries. He discussed with Dr. Castillo his desire to change his appearance and his mother, a longtime patient of Dr. Castillo, had spoken to Dr. Castillo about it. He testified that Dr. Castillo operated on him on repeated occasions to change his stomach, fingers, face and nose. Although Ramos's testimony was vague in many respects, and he could not identify Dr. Castillo in person, he accurately identified the office, and his recounting of the visits at night to Dr. Castillo's office corroborated the testimony of other witnesses.

Another witness, Ivan Buranich, who built a home for Ramos in the Poconos where Ramos stayed while he was on the run, saw Ramos put cream on the scars on his face, and saw him with a large bandage around his stomach, which Ramos stated was from having fat removed. Buranich also saw Ramos with bandages on his hands. Ramos informed him that he was having his fingerprints flipped by a friend of the family.

Castillo had produced the Treatment Record in response to a subpoena, and contended that Ramos's fingerprints had been scarred due to a barbecue accident on May 14, 1990, his nose had been altered by a blunt facial trauma, and his overall appearance had been changed due to excessive weight loss. The government produced evidence to undermine the Treatment Record and the barbecue incident explanation and to demonstrate that his change in appearance was more than a broken nose and weight loss. As indicated above, neither Sonia Santos nor her children recognized Richard Ramos when he was apprehended in 1992. Others who knew him well and saw him continuously until he fled in September of 1990 testified that they hardly recognized him upon seeing him in January of 1992. These included his attorney, Harold Kane, as well as Det. James Moffit and Sgt. Thomas Leisner.

With respect to the barbecue incident and the Treatment Record, the defense put great stock in the Treatment Record as an explanation for the change in Ramos' fingertips. However, the government witnesses testified to facts from which the jury could reasonably find that the Treatment Record was false. These witnesses included Marilyn Marinon, Dr. Castillo's receptionist, who testified credibly about the maintenance of patient records, the office procedures, and her recollection of certain events. She indicated that on May 14, 1990, Dr. Castillo treated Richard Ramos's brother, Edwin Ramos, and she worked until 8:00 p.m. that evening. She testified that Maria Ramos was a longtime patient, but that Dr. Castillo had never treated Richard Ramos, and she

had never seen him. She indicated also that she never saw the Treatment Record that had been produced.

If Ramos had experienced a barbecue accident on May 14, 1990, it would be safe to assume that he would have bandages or discomfort during the following week. However, Harold Kane, Ramos's attorney, saw Ramos once during the week after May 14, 1990, and a second time at a meeting on May 20, 1990, and did not observe any bandages or evidence of any kind that he had suffered burns or had an accident.[1] Similarly, Det. James Moffit was in attendance at the same meeting at which Kane was present on Sunday, May 20, 1990, and saw no evidence of any injury or treatment, notwithstanding the fact that he shook Ramos's hand. Further, both Ramos and his common law wife, Sonia Santos, testified that he never had a barbecue accident. In addition, the government's expert, Dr. Fox, opined that Ramos's scars were inconsistent with a barbecue accident.

The Treatment Record was in and of itself a strange-looking record, in that it was a single piece of paper with little or no patient information on the front and a treatment narrative and drawing of Ramos on the back. It was not produced as part of a patient folder or file, and had not been produced along with other records during the initial production of documents in response to the government's subpoena.

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1. The meeting was held after the indictment of Ramos's two brothers but before Richie's indictment, for the purpose of trying to convince Richie to cooperate with the government. Both of Ramos's brothers attended the meeting as well. (N.T. 2/24/97 at 12-14; 2/18/97 at 11-13)

From the above, the jury could reasonably conclude that there was never a barbecue accident, that Dr. Castillo did not treat Richard Ramos on May 14, 1990, and that the Treatment Record was a fabrication. Once having made this determination, the jury could use this and other evidence to reasonably infer that Dr. Castillo knew his medical treatment was of an illegal nature. The evidence was that Dr. Castillo was performing procedures on the fingertips of Richard Ramos which, if there was no barbecue incident, were otherwise healthy. The procedures took place in the middle of the night, no records were kept, and on one occasion, Dr. Castillo made a "house call" that lasted all night, to Ramos in the Poconos. Richard Ramos's mother had arranged for Dr. Castillo to do the procedures. Further, the jury could reasonably conclude that a physician who had prepared a false medical record and dated it before Ramos's indictment and flight was aiding the patient illegally and was attempting to cover up the crime.

Contrary to the defense's argument that there was no conspiracy proven, the jury could reasonably infer, and therefore conclude, that there was an agreement, and an understanding, among the various actors, including Castillo, to harbor Richie Ramos. All of the above evidence, which reveals not only clandestine procedures, but Castillo's not being shocked or surprised by the arrival of Rodriguez or the request to take a trip to the Poconos, points toward an understanding and arrangement. Further, there were no nurses present and no records maintained. The jury could reasonably find that the

government had proven the medical treatment was not legitimate and that Castillo knew exactly what he was doing and was part of the conspiracy.

Similarly, there is sufficient evidence upon which the jury could base its finding that Castillo knew that Ramos was a fugitive. While the defense relies upon United States v. Hogg, 670 F.2d 1358 (4th Cir. 1982), in arguing that the government did not establish sufficient evidence for a jury to find, beyond a reasonable doubt, that Dr. Castillo knew that a federal warrant existed for Richie Ramos, Hogg is distinguishable on its facts. In Hogg there was no testimony that the defendant knew the FBI had issued a warrant. Moreover, the government, at oral argument, could point to no specific circumstantial evidence that the defendant knew a federal warrant existed. Hogg, 670 F.2d at 1361. Conversely, in the instant case, the government presented ample circumstantial evidence from which the jury could draw an inference of knowledge on Castillo's part. Id. ("[a]ny inference of knowledge . . . must come from [the] alleged acts of harboring"). Indeed, the harboring acts of Castillo are far more substantial -- and thus more clearly indicate knowledge -- than the acts performed by the defendant in Hogg. First and foremost, the fact that Dr. Castillo was performing these procedures on an otherwise healthy person, late at night and in secret, was evidence of his knowledge. The procedures took place beginning in the fall of 1990, after Ramos's brother, Edwin Ramos (whom Dr. Castillo saw as a patient on May 14, 1990) had been indicted in April 1990, and after Jerry had been shot to death in July

1990. Mrs. Ramos, a longtime patient who received frequent treatment for stress, was indicted in the spring of 1991. Dr. Castillo knew of Maria Ramos's indictment, since he wrote letters to support her efforts to obtain bail. Also, Marilyn Marinon testified that she told Dr. Castillo in April or May of 1991 that federal marshals had come to the office looking for Richard Ramos, who was a fugitive. The procedure on one of Ramos' hands, as to which Sonia Santos testified, took place after the marshals' visit, and after Maria Ramos had been indicted on May 28, 1991. The trip to the Poconos after the stomach surgery in late 1990 lends further support to this finding. Why would Castillo have gone on this highly unusual escapade rather than refer Ramos to a doctor in the Poconos to treat an allergic reaction?

After the events of the conspiracy, Castillo made statements revealing his guilty knowledge. In the taped conversation between Castillo and Luisa Rodriguez, Castillo commented that he thought he was helping Ramos in a dispute between families. This constitutes an acknowledgment by him that he did in fact aid Ramos, and participated in the family's plan, but the explanation of a dispute between families makes no sense and is not corroborated by any evidence in the record, since the evidence consistently portrayed the family as extremely close and tight-knit. It could be taken by the jury as one more attempt to cover up what he had done. Similarly, when two agents delivered a target letter to Castillo in 1995, he acknowledged that he knew the marshals had come looking for Ramos and that he and his

receptionist had cooperated. He stated, however, that he did not know Ramos was a fugitive and that the services were done in the same spirit of the services he provided to the general Hispanic community. He also said that he removed a bullet from Ramos's head and repaired burns on his fingers, but when questioned as to whether he had reported the bullet to police at the time, he said that they were really just metal fragments. The jury could reasonably conclude that not only did Castillo know what he was doing, but he knew what Richie Ramos was up to as well.

The element of specific intent to obstruct justice by preparation of the Treatment Record is likewise satisfied by inferences drawn from circumstantial evidence. The record itself appears to have been prepared hastily and produced tardily. There is no evidence that would support it as a record made or maintained in the regular course of business and the jury could easily have found that it was created to impede the investigation. See McComb, 744 F.2d at 561-562. While Castillo is correct that no one witness, or group of witnesses, testified as a fact that Castillo knew of the conspiracy or that he knew Ramos was a fugitive, or that he knew the object of the conspiracy, or that he had fabricated the Treatment Record or had done so in order to obstruct justice, the inferences that the jury could reasonably draw -- and apparently did draw -- from the testimony of witnesses led very clearly to these conclusions. These inferences were based on the testimony of credible witnesses, including Dr. Fox. The jury apparently accepted the expert testimony of Dr. Fox, and discarded the testimony of

Dr. Gray to the effect that Ramos's scars were consistent with burns caused by a barbecue accident, and I cannot say that, based on the record before me, this was in any way improper or unsupported. As noted by Castillo himself in his brief: "The government can rely on circumstantial evidence; where it does, the inferences drawn from the evidence must have a logical and convincing connection to the facts proved." United States v. Ebo, 1995 WL 112985, at * 1 (E.D. Pa. Mar. 14, 1995); Defendant's brief at 6. This is clearly a case where the inferences drawn from the evidence do have such a logical and convincing connection.

2. Discrepancies between indictment and proof at trial.

Castillo goes to great lengths to point out the variances between the proof at trial and the specific factual allegations of the indictment, devoting nearly 40 pages to a review of the details of the surgeries as charged versus those actually proven through the testimony of witnesses. Castillo relies upon the case of United States v. Ebo, 1995 WL 112985, for the proposition that a conviction must be vacated where there is a variance between the indictment and the proof at trial. Ebo, as well as the cases relied upon by the government, stand for the proposition that the variance is only grounds for acquittal when the variance prejudices a substantial right of the defendant, namely, through the potential for double jeopardy or unfair surprise that could affect the defendant's defense. United States v. Lewis, 113 F.3d 487, 492 (3d Cir. 1977); Ebo, 1995 WL

112985, at * 3 (citing United States v. Padilla, 982 F.2d 110, 113 (3d Cir. 1992); United States v. Castro, 776 F.2d 1118, 1122 (3d Cir. 1985), cert. denied, 475 U.S. 1029 (1986); United States v. Adams, 759 F.2d 1099, 1110 (3d Cir. 1985), cert. denied, 474 U.S. 971 (1985)). The absence of any true prejudice or potential for double jeopardy is apparent from Castillo's contention that the prejudice arose from the impression left with the jury that "certain evidence had been offered where indeed there had been none." Clearly, if the government sought at trial to prove a different crime from that charged, or attempted to prove something not charged, a defendant has cause to complain. See United States v. Miller, 471 U.S. 130, 136 (1985)("Convictions generally have been sustained as long as the proof upon which they are based corresponds to an offense that was clearly set out in the indictment."); United States v. Asher, 854 F.2d 1483, 1497 (3d cir. 1988)("In order to rise to the level of an impermissible amendment, a variance must act to modify the indictment so that the defendant is convicted of a crime that involved elements distinct from those of the crimes with which he was originally charged."), cert. denied, 488 U.S. 1029 (1989). However, the defendant here relies primarily on the inconsistencies and failure of the government to prove charges in the indictment. While this is definitely a matter for argument on behalf of counsel -- and defense counsel did call the jury's attention to this weakness in the government's case repeatedly throughout the trial -- it is not a basis for vacating the jury's verdict, which was based entirely upon the proof offered by the government as to

the offense conduct at trial. While it is true that the government charged certain things which it did not prove, the indictment is only an accusation, and while the government must prove all of the elements of the offenses, it need not prove every detail as outlined in the indictment. See United States v. Gypsum Co., 600 F.2d 414, 419 (3d Cir. 1979)(finding in antitrust action that government was under no obligation to prove every overt act alleged and was not limited in its proof to overt acts alleged in the indictment), cert. denied, 444 U.S. 884 (1979); Ford v. United States, 273 U.S. 593, 602 (1927)(finding that a part of the indictment unnecessary to and independent of the allegations of the offenses proved may normally be treated a "useless averment" that "may be ignored"). The jury was told repeatedly that the indictment was only an accusation, that the statements of counsel were not evidence, and that the proof at trial had to be the basis for their verdict.[2]

Further, the discrepancies did not undermine the weight of evidence that was produced, but were, to the contrary, understandable in light of Richard Ramos's extremely vague recollection and testimony. Clearly, Ramos was the only witness who could characterize all that had been done to him, and he had difficulty, at best, in doing so. The key evidence, however, of nocturnal procedures and visits, facial, abdominal and fingertip

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2. The defendant notes that the prosecutor herself labored at the close of the trial in the summation to "distance" herself from the indictment, re-emphasizing that its evidence at trial was "significantly different, and less substantial, than the allegations contained in the indictment." Defendant's brief at 69.

surgeries, testified to by several witnesses -- but especially Luisa Rodriguez and Sonia Santos -- confirmed Ramos's testimony as to the overall procedures that were being done, making the details of what transpired on any one visit or to any specific area of the body, less important.

3. Admission of co-conspirators' statements.

Castillo makes much of the fact that co-conspirators' statements were admitted over objection. However, he does not detail how any one statement prejudiced his case, and it cannot be said that, given the consistency of the proof, which bore out what was said in the few hearsay statements admitted early in the trial, there was any prejudice, let alone error.

The control of the order of proof at trial is a matter committed to the discretion of the trial judge and on appeal a district court's decision to admit hearsay statements prior to determining their admissibility is reviewed only for abuse of discretion. United States v. Gambino, 926 F.2d 1355, 1360-61 (3d Cir. 1991)(finding in large-scale conspiracy case that district court's decision to admit the testimony subject to later connection was not an abuse of discretion), cert. denied, 502 U.S. 956 (1991); United States v. Continental Group, Inc., 603 F.2d 444, 457 (3d Cir. 1979)(upholding district court's decision to admit co-conspirator hearsay subject to later connection because "given the large amount of interrelated testimony to be considered in this case, we believe that alternative approaches may have been unduly complex and confusing to the jury or to the

court"), cert. denied, 444 U.S. 1032 (1980). The Third Circuit has stated that

> While the practicalities of a conspiracy trial may require that hearsay be admitted "subject to connection," the judge must determine, when all the evidence is in, whether in his view the prosecution has proved participation in the conspiracy, by the defendant against whom the hearsay is offered, by a fair preponderance of the evidence independent of the hearsay utterances.

United States v. Bey, 437 F.2d 188, 191 (3d Cir. 1971)(quoting with approval United States v. Geaney, 417 F.2d 1116, 1120 (2d Cir. 1969), cert. denied, 397 U.S. 1028 (1970)). It was only following a thorough review of the evidence and exploration of the matter with counsel, that I made the finding that there was sufficient independent evidence of a conspiracy.

Castillo contended at the time that these statements were under consideration that the conspiracy had not been proven and, therefore, the statements were inadmissible as against Dr. Castillo. I accepted a proffer as to Richard Ramos's testimony to the effect that his mother had spoken to Dr. Castillo and Dr. Castillo had operated on Ramos' abdomen late at night to remove fat. Certainly, this qualified as evidence of conspiracy, in that one is not given access to a doctor's office in the middle of the night to have surgery of this kind, in a clandestine atmosphere, unless there is some arrangement, understanding, or agreement on the part of the doctor. The concern as to the admissibility of statements made by Ramos -- as testified to by Rodriguez -- or as made by Ramos's mother -- as testified to by Ramos -- dissipated as proof of facts highly

probative of the overall plan and understanding to which Castillo was a party unfolded through the government's witnesses. Castillo's complaint that there was no "link-up" is to ignore the totality of the evidence presented, which clearly implicated Castillo as a willing participant.

Castillo correctly cites United States v. Gambino, 926 F.2d 1355, 1360 (3d Cir. 1991), for the proposition that the court, in admitting co-conspirator hearsay statements subject to later connection, should carefully consider and sparingly utilize this practice. The problem noted in Gambino is that if the government does not satisfy its burden of establishing the conspiracy, the jury has heard the evidence and the defendant could be irremediably prejudiced. However, this did not occur in this case. The proof of conspiracy, through the testimony of various witnesses as to the events which occurred, while circumstantial, was clear. Castillo's argument that other witnesses had to testify directly to Castillo's having voiced an agreement to participate is simply wrong. Rather, the later proof must show by direct or circumstantial evidence that there existed a conspiracy to harbor Ramos, and that Castillo, either by acts or words, agreed to be a member, knowing of its purpose. As indicated above, the actions of Dr. Castillo in performing the surgeries, admitting Ramos to his office late at night, taking trips to the Poconos, and treating Ramos to alter several different aspects of his appearance, on several occasions, and without objection, nurse assistance or the maintenance of any

file records, shows that he agreed to be a member of the conspiracy in question.

4. Error in the court's instructions to the jury.

Castillo complains that the charge to the jury on the issue of conspiracy to harbor a fugitive is confusing. However, I find Castillo's objections to the instruction confusing. Castillo complains that the instruction regarding intent, incorporating "knowledge," was unclear, but he fails to pinpoint the nature of the confusion or lack of clarity. Castillo also contends that I did not clearly instruct the jury on the material element of knowledge that a federal warrant existed for Richard Ramos's arrest. I disagree with Castillo, and note that his brief at page 135 and 136 contains a clear citation of this portion of the instruction, taken directly from my instructions. Castillo also objects to the instructions given at the beginning of the trial, which were very broad-brush, preliminary instructions regarding conspiracy to harbor a fugitive. Castillo objects because the jury was not specifically instructed that it was to pay attention to evidence concerning whether Dr. Castillo in fact actually knew that Ramos was a fugitive. To the contrary, the jurors were advised that they must pay attention to all of the evidence, and that specific detailed instructions would be given to them, and provided to them in typewritten form, at the end of the case. Further, defense counsel in his opening told the jury to listen very carefully for any evidence that

Castillo knew Ramos was a fugitive, drawing specific attention to this aspect of the evidence and the law. (N.T. 2/18/97 at 48)

Castillo's brief repeats, nearly verbatim, numerous pages from my instructions, which detailed the elements of the crime of conspiracy to harbor a fugitive -- elements which Castillo had insisted all along must be explained in greater detail than in the proposed drafts under discussion. Castillo now contends that "by its sheer breadth" the instruction was confusing. Not only did Castillo never object to the breadth, but his objections were responsible in large measure for the breadth of the instruction. Castillo objects to separating the concepts of conspiracy and the elements of harboring a fugitive, on the ground that this creates the "misimpression" that the two were not related and intertwined. This is utter nonsense, since the instruction itself did relate and connect these elements. The instructions, read as a whole, provided the jury with a concise and accurate statement of the law. See United States v. Park, 421 U.S. 658, 674 (1975)(in reviewing jury instructions, charge is to be considered in the context of the entire record of the trial).

The other aspect of the draft instructions about which Castillo objected was his view that the purpose of the conspiracy was not clearly stated. Castillo points to the various colloquies relating to the draft instructions, and it is impossible for me to determine how the instructions as given to the jury differ in any significant way from the instructions requested by Castillo. In fact, at page 218 of the transcript of

February 25, 1997, Mr. Raspanti concedes that the instruction he is looking for is that Dr. Castillo was altering Ramos's appearance to avoid apprehension, and the charge specifically includes that very phrase as noted at the top of page 136 of defendant's brief.[3]

The last objection to the instructions raised by Castillo is almost so absurd as to not bear mentioning. At some point in the hour-long instructions, the court mis-read the phrase "not guilty" as "guilty." After the instruction was read, and the jury had retired to deliberate, Mr. Raspanti made a blanket statement renewing his prior objections, and then said:

> MR. RASPANTI: The only thing -- it's so minor. On page 19 -- minor, in addition to the other objections I made. I thought on page 19, when you were reading the last paragraph, I read not guilty, but heard guilty. And it could be just that I didn't hear it correctly.
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> . . . .
>
> THE COURT: Oh. Did I say guilty? I did say guilty? . . . All right. When we take the instructions out, we'll tell the jury that I may have misread that on page 19.
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> MS. HAYES: That's fine, Your Honor.
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> THE COURT: All right.

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3. The government cites case authority for the proposition that if an objection is not made, it is waived. Government of Virgin Islands v. Knight, 989 F.2d 619, 631 (3d Cir. 1993), cert. denied, 510 U.S. 994 (1993). Since it is very difficult to tell from Castillo's brief exactly what he contends should have been stated that was not, and which specific objection should have put me on notice of the erroneous character of the instruction, I will not rely upon this principle or these authorities. However, I will note that other than a blanket incorporation of all prior objections, counsel did not focus, either before or after the charge, on any specific confusing or improper segment, thus making it extremely unlikely that I would have been able to correct a misstatement or erroneous portion.

. . . .

> MR. RASPANTI: And the only other thing, and maybe it's assumed, is when you went through the expert witnesses, there were certain stipulations to expert testimony
> . . .
>
> THE COURT: Marianne, do you want to tell them that one -- take the instructions out to them and just tell them. But if I misread it, they can reread it for themselves.

Nowhere did Mr. Raspanti request that the jury be brought back into the courtroom or indicate that he viewed this as a real problem. It is absurd to think that this misreading of this single phrase in and of itself could have resulted in an erroneous guilty verdict.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal Action
	:	
v.	:	
	:	
JOSE CASTILLO, M.D.	:	NO. 96-CR-430

O R D E R